

From: David Turover
To: Microsoft ATR
Date: 1/26/02 1:19pm
Subject: Microsoft Settlement

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To all whom it may concern,

I wish to express my displeasure with the weakness of the proposed settlement in the Microsoft antitrust case.

I am a 22 year old student majoring in Computer Information Science at junior college. I have been a computer user since the age of 6, and have been aware of the computer industry since 1995. I have used Microsoft products and consider them generally well developed, and I have also used alternatives to Microsoft's products including BeOS and Linux. I currently use a variant of the University of California's BSD Unix operating system and maintain my parents' Windows 98 based computers. I have had no employment by nor relations with Microsoft or its competitors other than having been a user of their products.

Microsoft has committed certain crimes for which Microsoft should be punished. These crimes have harmed competitors of Microsoft, and consumers have been harmed by the lack of innovation due to the unnatural downfall of Microsoft's competitors. Although some or many of Microsoft's competitors would have failed in the free market without any illegal actions needing to be taken by Microsoft, the eventual natural failure of any of these companies should not relieve Microsoft of punishment for using illegal methods to hasten their downfall.

Microsoft has a long history of using illegal, immoral, and disreputable acts to deprive its competitors of the right to compete in a free market. When the government has attempted to enforce its laws by binding Microsoft to agreements to not break the law in certain ways that Microsoft had broken the law, Microsoft has then broken the law in other ways and claimed innocence because the contracts did not explicitly forbid breaking the law in this particular new way. Without any reasonable threat of serious punishment, all further such contracts are certain to be flouted in the same manner, and the failure of the government to seek additional punishment against Microsoft for failing to abide by the earlier consent decrees, especially after the government has already pressed and won its case, shows a lack of willpower to enforce the terms of the existing agreements. By their previous conduct, it stands to reason that Microsoft will exploit this lack of will to enforce the law.

Following are descriptions of a few of Microsoft's better known acts as examples of the company's general behaviour:

When there were equivalent alternatives to Microsoft's Disk Operating System and Microsoft Windows was not an operating system but a separate application product, Microsoft introduced a programming routine into a version of Windows that would detect whether it was running on one of these alternate operating systems and if so print a message stating that an error had occurred. Microsoft distributed this version to technology writers and enthusiasts who took the message to mean and reported it as meaning that Windows might not run well under any operating systems other than Microsoft's, a notion that Microsoft had been actively spreading at the time. (Examining the Windows AARD Detection Code, Dr Dobbs Journal, 1993)

Microsoft has paid employees and outside agencies to write letters to the editors of newspapers and magazines, and more recently to the States' attorneys general pursuing cases against Microsoft, pushing a pro-Microsoft viewpoint while claiming to be independent; and Microsoft employees have posted pro-Microsoft messages to Internet newsgroups and message boards while claiming to be independent. (Microsoft Plans Stealth Blitz to Mend Its Image, Los Angeles Times, April 10, 1998; Also the Phil Bucking and Steve Barkto incidents, and the recent letter writing campaign from the grave to state attorneys general) Given this history, it should be expected that some of the public comments on this issue are from people and organizations paid by Microsoft to write or from people directly

influenced by public relations companies paid by Microsoft.

During the time of the "Browser Wars", the installation routine for most Microsoft products would also install Microsoft's Internet Explorer web browser without asking for the user's permission and regardless of whether Internet Explorer was a requirement for whatever product was being installed. Microsoft also threatened computer makers with the revoking of their license to sell Windows unless the computer makers stopped installing products that competed with Internet Explorer. Microsoft's famous investment in Apple came with the condition that Apple would drop Netscape's Navigator web browser and instead make Microsoft's Internet Explorer the only browser offered on systems it shipped.

Microsoft has begun patenting routines needed for programmers to write software that is compatible with Microsoft's software, and has forced programmers to remove such compatibility. (Microsoft Patents ASF File Format, <http://www.advogato.org/article/101.html>) While this is their right, it makes compatibility with Microsoft software impossible.

Microsoft and its representatives perjured themselves repeatedly during the trial under Judge Jackson, and Microsoft produced and presented as evidence a doctored video demonstration purporting to illustrate the effects of certain changes to Windows 98.

Microsoft in its actions has shown itself to be a criminal organization with little respect or regard for the laws of the United States of America, little respect or regard for the truth, and with little respect or regard for the freedom of the marketplace.

To decide upon a punishment, the main end must be to prevent and discourage Microsoft from continuing to carry out further criminal acts. It is less important to make reparations towards consumers and competitors harmed or to consider the economic impact of the punishment. The result must also treat noncommercial computer users and programmers, such as hobbyists and universities, as fairly as businesses are treated.

A fine is the most obvious method of punishment against a business. However, a fine absent of other punishment will do nothing to prevent Microsoft from continuing to carry out criminal acts as Microsoft has enough liquid assets on hand to painlessly pay any but the most extreme fine.

Another consent decree may be necessary to state specific violations of the law that Microsoft has committed. This would come with two caveats: It must not leave open the possibility of allowing Microsoft to violate the law in ways which other companies are not permitted without government favour, as many contracts between government and businesses do; and a consent decree absent of additional punishment will not dissuade Microsoft from continuing to carry out criminal acts, as earlier consent decrees have not.

The removal of Microsoft's government granted trade protection, in the form of copyrights and patents, on certain of their products is another option that could be considered. A similar option to be considered is the seizure of certain of Microsoft's trade secrets and their release to the public domain. A severe form of punishment along these lines, which has not been used against a major business in recent history, would be the revocation of Microsoft's corporate charter and right to do business within the United States.

Some have suggested that Microsoft's source code be released under the GNU public license used by the Free Software Foundation. I do not agree that this is appropriate, as the benefits would nearly exclusively be towards hobbyists. It has also been suggested by the States that Microsoft be made to make its Office suite of products capable of running on operating systems that compete with Windows. Again, I do not agree with this proposal as, while Office has a monopoly sized user base and is a major source of Microsoft's

revenue, it is not the focus of the case against Microsoft and several able competitors exist.

Microsoft has offered, as a settlement to one of the cases against it, to present computers running its software to the nation's public schools at its cost. As schools contain a large number of computers running Apple hardware and software, and these computers would be replaced by the Microsoft computers, such an offer in fact benefits Microsoft rather than punishes and as such should not be considered.

Since the core of the case is about Microsoft embedding products into their Windows operating system, and a major complaint in the industry is of the difficulty of attaining compatibility with Microsoft's operating system, I suggest that the punishment include the seizure and placement in the public domain of all the source files within the development branch of the Windows operating system current to the date of the new decision, including the source code to all programs and libraries that Microsoft considers a part of their OS and is included with Windows in sales to consumers and OEMs. In addition, Microsoft should be stripped of ability to use their patent protections to prevent others from developing products derived from the publicly released source code.

This would punish Microsoft by allowing others to immediately build and distribute operating systems equal to Microsoft's and in doing so threaten Microsoft's market position. With OEMs able to build their own Windows-like systems, most of the points in the proposed consent decree become moot. The process of making products compatible with Windows and its associated programs would be greatly eased with the metaphorical blueprints to Windows publicly available.

Whatever solution is decided upon, it must hold to these points: Microsoft must be given a punishment, not simply a warning, as they continue to ignore prior warnings given them; the punishment must take into account Microsoft's positions of monopoly power and where they have abused this power to muscle into other industries as relevant to the court case; the punishment should favour consumers and the marketplace over Microsoft or a few of its competitors, while not discouraging innovation or competition against Microsoft. Fairness towards Microsoft is unimportant as fairness is more than Microsoft has given others.

With respect and regards,

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